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*Invitation*  
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The purpose, I take it, in asking different members of the Faculty to address you on these convocation occasions, is that they may bring to bear on some topic of general importance, a point of view which their particular line of study would seem to make valuable. This being the case, I have chosen as my topic a subject very much discussed, possibly to the point of making the subject a hackneyed one, but nevertheless a very important and vital subject.

My topic is the Administration of Criminal Justice. In the law, in a criminal case it is necessary first to prove what is called the *Corpus Delicti* or the body of the crime. You must first prove the deed done, before you can proceed to prove who did it. One could not, therefore, be convicted of murder merely because he confessed to having murdered a man.

Before discussing then, the question as to why there is so much crime in this country, and what should be done about it, it might be well to ask, is there an unusual amount of crime in this country, and is there any need of anything being done?

On the one hand we have the statement made by Chief Justice Taft, when President of the United States in 1905, in Chicago, and later reaffirmed in 1907, to the effect that the administration of criminal justice in the United States is a disgrace to our civilization. On the other hand, we have the statement made recently by William D. Guthrie, President of the American Bar Association, to the effect that the remark just quoted from Chief Justice Taft has done more harm than any single utterance made by a prominent public man during the past thirty years. What then are the facts?

Criminal statistics, like other statistics, are more or less unreliable. Much depends upon who gathers them. One cannot vouch for the absolute verity of the figures about to be given, but making all reasonable allowance for inaccuracy, a picture is drawn of conditions in this country in regard to crime that must make us, as a nation, hang our heads in shame. I realize that



figures are tiresome and that comparisons<sup>particularly with foreign nations</sup> are not only odious but often irritating as well. But listen, please, to these figures, tiresome and irritating as they may be, for they are my text. In one year, 1925, from 9,000 to 10,000 murders were committed in the United States. 10,000 murders is supposed to be about our annual average. In the same year in England and Wales, with 40,000,000, not more than 100 murders were committed, while in France there were brought to trial but 83 first degree murder cases. In other words, in England and Wales, and probably to a less degree in France, a murder was perpetrated on an average but little oftener than once a week, while in our own country, during every hour of the day and night on an average, a murder took place. Not 10 of the 100 murders in England were in the perpetration of a robbery, but in this country at least 3,000 of the murders were so committed. In 1921 there were over 32,000 burglaries and nearly 50,000 robberies in this country, while England and Wales during the same year had only 211 robberies reported to the police and in France but 47 cases of robbery were reported to the court of assize for trial.

It is estimated by a committee of the American Bar Association that the yearly cost of crime in the United States is between five and ten billion dollars, depending upon whether you figure the direct or indirect cost. One writer, a man of long judicial experience, estimates that there are 135,000 men and women in this country at large who have killed, which if true, is a greater number than all of our clergy or male teachers or police. The same writer estimates that there are nearly 400,000 men and women in this country "a veritable army" who live either partly or wholly on crime.

These figures but confirm what is more or less a matter of common knowledge to us all. The Herrin feuds, murderous gangs moving about our streets with rapid firing guns, the United States mails protected by Marines, armored cars in our streets, the Governor of a neighboring state under indictment and his predecessor in gaol, the sheriff of a neighboring county



pleading guilty to knowingly receiving stolen goods from a prisoner, the chief justice of the municipal court of one of our largest Ohio cities and the chief of police of a somewhat smaller city indicted for murder - all these and many other cases are matter of common knowledge. Surely the committee of the American Bar Association is right when it declares that we are the most lawless civilized nation on earth.

If these are the facts concerning crime, what are the facts concerning the efficiency of punishment? Governor Herbert S. Hadley, former Chancellor of Washington University, whose recent untimely death we are still mourning, as Chairman of a Committee of the American Law Institute in 1925, reports "it is my judgment that of those committing major crimes such as homicide, burglary, robbery, assault and battery, etc., not one out of every ten is apprehended and adequately punished. If we consider only such offenders as are apprehended and prosecuted, I estimate that only 30% are convicted and adequately punished and of those placed on trial before a jury, less than 50% are convicted and adequately punished. So I give it as my carefully considered judgment that our system of apprehending and prosecuting those who commit major offences is only about 10% efficient. That as to all other offenders it is about 5% efficient. That for those apprehended and indicted for major offences, it is only about 25% to 30% efficient, and for those actually tried for major offences it is only 50% efficient."

This then, is the Corpus Delicti which I set out to prove. Admitting the possibility of a margin of error in the figures given, there is enough of certainty left to make us all, including even the 100% Americans, admit that in the important matter of security of person and property, we, as a nation, are far from being first.

This brings us to the second and hardest part of our topic. If we are the most lawless nation on earth, why is it so, and what can be done about it?



Why is it? I wish I could answer that <sup>question</sup> in a single sentence, for then possibly the remedy would be as easy, but this cannot be done. As many reasons have been given for the condition of crime in this country as have been given for the fall of Rome. I have counted myself, at least fifty different reasons given by various writers, ranging, as one writer has said, all the way from the World War and automobiles to degeneracy in dress and recession in religion, industrial depression, lack of parental restraint, spectacular journalism, maudlin sentiment for <sup>criminals</sup> ~~crime~~, emotional and ignorant juries, cowardly judges, political corruption, abuse of the <sup>"rocks" by the Prosecutor and of the especially the bench</sup> ~~parole and pardon laws~~, <sup>parole</sup> lack of cooperation between the enforcement officers of the various states, <sup>enactment of too many laws</sup> ~~making difficult enactment of its many laws~~, impossible of enforcement, (Elihu Root once made a count and found that from 1909 to 1913, 62,014 laws were enacted in this country.) All these and many more reasons are urged, and all I have no doubt, enter more or less into the explanation of our crime situation. But, after all is said and done, the greatest reason why we have so much crime in this country is no mystery. The reason is that criminals are not afraid of the law. Crime in the United States is a good, insurable risk. "In this country," says Judge Cavanaugh, "if a man deliberates if he shall kill another, he knows while he deliberates that if he should kill, the chances are three to one that he will never be arrested, twelve to one he will never be convicted and more than one hundred to one he will never die for his crime."

Three to one he will never be arrested. Here is, I think, the point of greatest weakness, namely the police. A short time ago, public minded citizens of Missouri raised a considerable fund and put to work a Crime Commission. The work was elaborately and scientifically done and the report has been but recently made. Over 10,000 felony cases were traced from beginning to end. Many interesting facts were brought out but the most startling statement made in this report is as follows:-



"It is probably," says the report, "well within the range of conservative accuracy to estimate that of every 100 who commit <sup>major</sup> crimes, 81 escape arrest. ✓ In England last year, every murder committed had been solved before the year was over. I feel very strongly that we can never solve the problem of crime in this country until we have solved the problem of police, both rural and urban. The policeman in this country is as good, man for man, as in other lands, but the policeman in other lands has a training in the investigation of crime amounting almost to a university course not known here, and the policeman in other lands is not in politics as he is here. The problem here is more difficult than elsewhere for many obvious reasons, but that is all the more reason why the effort should be better. Our whole attitude toward the police in this country is wrong. The police should be a body of men carefully chosen for fitness, thoroughly trained in all modern methods of crime detection, absolutely free from the influence of politics, and then held in the highest respect by all the community. We do not seem at all to appreciate the importance of the work of these men, who stand between us and the army of 400,000 criminals, who daily risk their lives in single combat in secret places, without the aid of martial music or the applause of a grateful country. The first job we have is to put the police on a scientific basis. Until that is done, there is little use of talking about improving the crime situation in this country. The University of California conducts each year, a school for policemen in which a training is given in all modern methods of criminal investigation. It would be a wholesome thing for such a school to be established <sup>in this University</sup> here and in many other places as well.



Another reason the criminal is not afraid is found in our antiquated method of criminal procedure. But before speaking of procedure, a word should be said about the courts. MacLay Hayne, the very able Prosecuting Attorney of Cook County, Illinois, at a time when Chicago (which is Cook County), was seriously engaged in enforcing law rather than repelling the  
*right design* of Geo. ~~III~~<sup>V</sup>, in a letter written upon his retirement from office said, "the courts should not be permitted to escape their share of blame. Political cowards, inexperienced and incompetent judges, in the past have permitted trials to be turned into a mockery and their court rooms into a circus so that jurors have been justified in believing they were attending a farce comedy rather than a trial in a court of law. In violation of all rules of evidence, decency and dignity, attorneys for defense have been allowed to run riot, intimidate state witnesses and the police and attempt to destroy the character of the public prosecutor and his trial associates." The famous Cooke Horne, being tried before the great Lord Mansfield, took occasion to inform his lordship that his only business was to see that order was maintained and that he was not to bother about anything else. Too many American judges are willing to assume the role assigned to Lord Mansfield, but which neither he, nor any other English judge since has ever been willing to assume. It has been pointedly said that the difference between an American trial and an English trial is that here a case is tried before Judge so and so, while in England it is tried by Judge so and so. The three or four hundred men who constitute our appellate courts must bear their share of the criminal unafraid. An examination of affirmances and reversals in 10 typical states of 1426 civil and criminal cases, show 480 were reversed and another recent examination of criminal cases alone made in five typical states show nearly half the cases appealed were reversed. In 1922, in all England and Wales, out of a total of over 8,000 <sup>with</sup> criminal cases, only 80



were appealed. The *classic examples* of technical rulings reversing convictions are familiar. In Missouri in 1907 a man named Campbell who had committed a terrible crime was set free by the supreme court after his conviction because the word "the" was left out of the last line of the indictment. In the State of Washington a conviction for "stealing one hundred dollars lawful money" was set aside because the indictment failed to charge "lawful money of the United States". The supreme court gave as a reason that the victim might have been carrying around lawful Mexican money. The Indiana supreme court granted a new trial to a man indicted for stealing a "Smith and Weston revolver" whereas it should have said, of course, "a Smith and Wesson". In Ohio in 1910 a man was tried and convicted for murder. He was indicted as \_\_\_\_\_ Stuckey, alias \_\_\_\_\_ McCormack. He was at the trial all the time, put in his defense, never denied he was the man meant by the indictment and was convicted upon the evidence. He was set free by the Supreme Court of Ohio because during the trial specific evidence was not introduced to prove that the man who defended himself at the trial as McCormack was also the man named in the indictment as Stuckey. Many more illustrations of this kind could be given but it is needless for this loop-hole for criminals is being rapidly closed up. Both the Missouri and the Ohio case were over-ruled in later decisions and one cannot accuse these courts today of being over-technical. It is said the judge who gave the opinion in the Missouri court went to his death largely because of the criticism of that decision.

It must be said, however, that the reviewing courts as a class do not probably realize how much even now they exercise the power of reversal in criminal cases. An eminent judge in an article in the American Law Review written in 1925, says that he has compiled a list of 800 cases in which the reviewing court set aside conviction of guilt for reasons which did not go to the guilt or innocence of the accused, and the president of a



state bar association of a southern state in answering the statement of a supreme court judge of that state to the effect that there were very few reversals in that state, pointed out that he had made an examination of 75 murder cases which had found their way into the circuit and in the majority of these cases the reversal was for reasons which had nothing to do with the guilt or innocence of the accused.

While the courts themselves must bear their burden of responsibility, a still greater weakness lies in the laws under which they act. This is not the place to go into a detailed examination of the laws of criminal procedure. Suffice it to say that they work at every stage of the trial for the benefit of the accused and make difficult his conviction. An accused is presumed innocent and must be set free unless all reasonable doubt is removed, and a reasonable doubt in the mind of a single juror is enough, although eleven others are absolutely sure of his guilt. The accused may, in all states, refuse to testify, and in most states his failure to testify cannot even be commented upon. If found guilty, the accused may take the case to a higher court where everything done by the prosecutor and the court and the witnesses is carefully scrutinized for error, with the result, as told before, of many, many reversals. But if acquitted, no matter what the court or witnesses or counsel for defense may have done, no matter how much of a miscarriage of justice has taken place, the state has no right to go to a higher court and ask to have the error set aside and a new trial granted. These are but a few of the chief guards set up to protect the innocent man, but which, in effect, make extremely difficult the conviction of the guilty. True, as Justice Holmes has said, the problem now is not so much the danger of the conviction of the innocent as it is the danger of the acquittal of the guilty.

The fact of the matter is, we are working under an antiquated system of criminal procedure, all right in its day but sorely inadequate at the present time. In 1921 the French Government sent a distinguished lawyer M. Cotten, to England



to study its system of handling criminals. He reported that the old English penal code as enforced 200 years ago, had been written in blood and that as a result there had been a conspiracy of mercy among judges and makers of rules of procedure to save men from conviction. There was a time when torture was not unknown, when it was essential that a man accused should not be compelled to testify, but is there any reason today why the man against whom an indictment has been made and against whom a grand jury has found probable cause, should not be compelled to tell what he knows, since he, of all men, knows the facts? There was a time when the grand jury was a useful thing, but that has long since ceased to be of real practical value in most cases. There was a time, possibly when the judges were the tools of kings, that the jury deserved the eulogy of Blackstone and was the protection of innocence against tyranny. It was indeed then best that the judges were not allowed to even comment on the evidence to the jury. But is there any reason today why judges in criminal cases in our state courts should not do as the English judges do, analyze to the jury the evidence and comment upon it? There may have been a time when it was well that subservient higher courts should not be allowed to disturb a verdict or acquittal by a jury, but is there any reason today why the state as well as the accused, as is the law in Connecticut, should not have the same right to have a trial, shot through and through with error and mis-conduct, set aside by a higher court? The conspiracy of mercy which 200 years ago was essential to protect the accused against a penal code written in blood, no longer needs to exist, but the conspiracy of mercy still remains, and customs and rules of procedure developed in an age of despotism and tyranny are still primarily featured in this country, although they have long since been abandoned in the land of their origin.



Why does all this go on, and in view of the appalling crime condition in this country, why is not something done? The answer is to be found in the last and most important reason for our situation, and that is, the mind of the people themselves. For some reason or other, a change has taken place in the minds of the people, and there has grown up in this country a racial attitude which minimizes and condones crime. This explains the attitude of courts and newspapers and the weakness of maudlin juries, all of whom are but a part of the people and reflect their general attitude. It is discouraging, therefore, but not especially surprising to learn that the Legislature of Missouri refused to approve a single one of the many recommendations made after months of study by the Missouri Crime Commission. So long as the people are willing that the police should continue to be, as is so often the case, a part of the political machine, so long will 80% of all felons fail of arrest. So long as the people prefer the present hodge podge of law and continue to sentimentalize about crime and feel in a vague way that the present helter skelter system brings about a better mixture of justice and humanity than would a more orderly, swiftly moving method of procedure, so long will the criminal be unafraid and so long as the people in their minds continue to condone and minimize crime, so long will juries fail to convict, even tho the guilt be manifest. We cannot expect much from judges, tho what little is being done is being done as much by them as any one. Men who are a part of a system are not usually willing to change it, whether that system be religion, <sup>with collegial</sup> athletics or law. When Romilly was making his great fight in England for a judicial reform, the judges as a unit were opposed. Many threatened to resign if the reform was passed, although history does not record that any did. The change will come when the attitude of the mind of the people concerning crime is changed. When an enlightened and aroused democracy really believe that crime is a fearful thing, and that the criminal element should be under



control, then it will be done. With the changed attitude of mind our departments of police will be bodies of scientifically trained men and as free from corrupt influence as the courts, our antiquated system of procedure, devised for a time of tyranny and oppression, will be made up to date, effective, swift-moving, and because of its certainty and justice, making sure not only the conviction of the criminal but even more than now, the protection of the truly innocent; and lastly our trial courts will at all times be composed of men who, because of their great ability and integrity, can be safely entrusted with great power; and then, to these courts will be given in criminal cases far greater power than ever before, that they may be in truth triers of the case and not merely moderators at a meeting.

This, then is my case. I trust I have not over-estimated it. I am not asking a radical thing. All that I propose and much else has been proposed by the best minds of the country and is in force in the countries where crime is kept at a minimum. "Popular sovereignty" says Maine, "is a fragile thing, and of all forms of government the most difficult." More than two thousand years ago Aristotle divided government into three forms, monarchy, oligarchy and democracy. These are the pure forms, he says, but each has a degenerate off-spring form, into which it inevitably descends. Monarchy into tyranny, oligarchy into ~~oligarchy~~ autocracy and democracy into anarchy. I am not afraid of anarchy in this country, but I am afraid that democracy will not continue to be an effective, virile form of government with a people indifferent to the evils which threaten them.

To help a little in dispelling this indifference in the people is the purpose of this paper.